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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,486	12/29/2003	Euljoon Park	A03P1088	8738

36802      7590      04/06/2006

PACESETTER, INC.  
15900 VALLEY VIEW COURT  
SYLMAR, CA 91392-9221

EXAMINER

FAULCON JR, LENWOOD

ART UNIT      PAPER NUMBER

3762

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

<b>Application No.</b> 10/748,486	<b>Applicant(s)</b> PARK ET AL.	
<b>Examiner</b> Lenwood Faulcon, Jr.	<b>Art Unit</b> 3762	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 1/5/2006.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-36 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed January 5, 2006, have been fully considered but they are not persuasive.

Examiner takes the position that Alt teaches of promoting intrinsic rhythm when a patient transitions from a comparatively less upright posture to a comparatively more upright posture, since the reference teaches that "if the patient arises from a reclining position to an upright position (whether sitting or standing), the control exercised on the pulse generator is to increase the pacing rate" (col. 7 lines 10-15). Further, Alt teaches that the control mechanism operates to increase the pacing rate in the same manner, as would the heart rate of a healthy person with a normal heart (col. 2 lines 38-44) and not necessarily abrupt (col. 8 lines 44-48).

### *Claim Rejections - 35 USC § 102*

2. Claims 1-3 stand rejected under 35 U.S.C. 102(b) as being anticipated by Alt (U.S. Patent No. 4,846,195).

### *Claim Rejections - 35 USC § 103*

3. Claims 4-35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (U.S. Patent No. 4,846,195) in view of Pitts Crick et al. (U.S. Patent No. 6,104,949) as applied in the previous Office Action of October 5, 2005 and applied above.

4. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (U.S. Patent No. 4,846,195) as applied to claims 1-35 in the previous Office Action of October 5, 2005, and as applied above.

Alt teaches that the output of the system's sensor mechanism can serve "either to control the selected physiological functions of the patient directly or to evaluate such a control with the aid of another parameter" (col. 3 lines 51-54). Examiner takes the position that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Alt to include a orthostatic rate inhibitor to disable increased pacing responses if a patient's heart is in intrinsic rhythm, since it is well known in the art to provide rate inhibitors for a duration of time for various reasons, including verification of need of increased pacing from another parameter. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Alt, to have the limitations of claim 36.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sheldon (U.S. Patent No. 5,725,562), Sheldon (U.S. Patent No. 5,957,957), Sheldon et al. (U.S. Patent No. 6,044,297), Dauer et al. (U.S. Patent No. 6,134,471), Meyer (U.S. Patent No. 6,308,098), Pianca et al. (U.S. Patent No. 6,466,821), Townsend et al. (U.S. 2002/0170193), Scheiner et al. (U.S. 2002/0147475), Daum (U.S. 2002/0147476).
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lenwood Faulcon, Jr. whose telephone number is 571-272-6090. The examiner can normally be reached on Monday-Thursday from 9 to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes, can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Lenwood Faulcon, Jr.

  
George Manuel  
Primary Examiner